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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/550,890

09/27/2005

Heinz Focke

Q90107

3733

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EXAMINER

DEMEREE, CHRISTOPHER R

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

03/18/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/550,890

**Applicant(s)**

FOCKE ET AL.

**Examiner**

CHRISTOPHER DEMEREE

**Art Unit**

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 September 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-10 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 27 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-850)  
Paper No(s)/Mail Date 2/16/2006 and 9/27/2005  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 5 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Draghetti (WO 02/32786 A1).

Regarding claim 1, Draghetti teaches a hinged-lid packet for cigarettes (see Abstract) comprising a box part (1) with box front wall (7), box rear wall (8), box side walls (9) and base wall (10), and a lid (5) which is pivotably attached to the box part and which comprises lid front wall, lid rear wall, lid side walls and end wall (see Fig. 1), characterized in that a region facing at least one of the side walls is configured as having a cross-section that is trapezoid in shape (see Fig. 4), with converging material strips or legs (22a and 22p) connected respectively to the box front wall and box rear wall and to the lid front wall and lid rear wall (see Fig. 1), said material strips having a width that is greater than the diameter of one cigarette and less than the aggregate diameter of two adjacent cigarettes (see Fig. 4).

Regarding claim 5, Draghetti teaches a hinged-lid packet for cigarettes characterized in that the width of the side walls (9) comprised of two overlapping side tabs (16i and 16'i) is somewhat less than the dimensions of two adjacent cigarettes (see Fig. 4).

Regarding claim 9, Draghetti teaches a hinged-lid packet for cigarettes characterized in that base corner tabs (54) and lid corner tabs (53) are arranged as the continuation of interior box side tabs (see Fig. 3) and lid side tabs, with the corner tabs being adapted to the contour of the base wall and end wall by means of corresponding exposed tab edges, or corresponding in their transverse dimensions to the width of their assigned side tabs (Page 10 line 22- Page 11 line 4).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draghetti.

Regarding claim 2, Draghetti discloses the claimed invention except for teaching that said material strips or legs are directed at an angle of approximately 30 degrees to the box front wall and approximately 60 degrees to the transverse box side wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the material strips or legs to be directed at an angle of 30 degrees to the front wall and 60 degrees to the side wall, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In *Re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claims 3 and 4, Draghetti discloses the claimed invention except for the cigarettes configured within the pack in the same formation as the instant application to configure the cigarettes within the pack in its marginal region - in the region of the trapezoid-shaped cross section - a marginal transverse row with two adjacent cigarettes and a transverse row arranged adjacent thereto with three adjacent cigarettes, with the cigarettes of the transverse row preferably assuming a saddle position with respect to the cigarettes of the transverse row. It would have been an obvious matter of design choice to configure the cigarettes in such a manner, since applicant has not disclosed that the instant application's cigarette configuration solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with cigarettes configured in any manner within the pack.

5. Claims 6-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draghetti in view of Focke et al. (US 6343691 B1; hereinafter Focke).

Regarding claims 6-8, Draghetti teaches everything except rounded corners where the side walls meet the front and rear walls of the cigarette box. Focke teaches a hinge-lid pack for cigarettes comprising rounded edges (54 and 55; see Figures 7-11). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Draghetti's cigarette box to include rounded corners in order to better adapt the container to the dimensions of the cigarettes stored within (Focke; Col 4 lines 52-55).

Regarding claim 10, Draghetti teaches everything except a collar for the cigarette box made from a separate blank. Focke teaches a hinge-lid pack for cigarettes

comprising a collar (12) constructed from a blank separate to that of the box portion (see Fig. 12). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Draghetti's cigarette box to include a collar attached to the rear of the lid in order to reinforce the strength of the hinged lid (Focke; Col 4 lines 34-48).

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ameringen (GB 2152905 A). Ameringen teaches a hinged lid cigarette packet comprising structure similar to that of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3782

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/  
Examiner, Art Unit 3782

/Nathan J. Newhouse/  
Supervisory Patent Examiner, Art Unit 3782